

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

| | | |
|-------------------------------|---|----------------------------|
| TIMOTHY COOLEEN, |) | |
| |) | Civil Action No. 04-63E |
| Plaintiff, |) | |
| |) | Hon. Sean McLaughlin |
| v. |) | U.S. District Judge |
| |) | |
| JOHN LAMANNA, <u>et al.</u> , |) | Hon. Susan Paradise Baxter |
| |) | U.S. Magistrate Judge |
| Defendants. |) | |
| |) | ELECTRONICALLY FILED |

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT OR, IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

AND NOW come Defendants, by their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul D. Kovac, Assistant United States Attorney for said district, and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully move the Court for an Order dismissing the remaining claims in Plaintiff's Second Amended Complaint or, in the alternative, for summary judgment in favor of Defendants.

A Memorandum of Law in Support of this Motion and the accompanying exhibits are being filed simultaneously herewith, and the contents therein are incorporated by reference.

WHEREFORE, Defendants respectfully request that the Court enter an Order granting Defendants' Motion to Dismiss the Second Amended Complaint or, in the alternative, granting summary judgment in favor of Defendants and granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,

MARY BETH BUCHANAN
UNITED STATES ATTORNEY

By: s/Paul D. Kovac
PAUL D. KOVAC
Assistant U.S. Attorney
Western District of Pennsylvania
U.S. Post Office & Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7489

Dated: May 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2008, I electronically filed and served via first-class U.S. Mail, a true and correct copy of the foregoing Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint or, in the Alternative, Motion for Summary Judgment to the following:

Mr. Timothy Cooleen
8777 Chautauqua Road
Fredonia, NY 14063

s/Paul D. Kovac
PAUL D. KOVAC
Assistant U.S. Attorney